



## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Rural Housing Service

### Rural Business-Cooperative Service

### 7 CFR Part 5001

[Docket No. RUS-19-Agency-0030]

RIN 0572-AC56

### OneRD Guaranteed Loan Regulation

**AGENCY:** Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, USDA.

**ACTION:** Final rule; request for comments.

**SUMMARY:** Rural Development's Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, agencies of the United States Department of Agriculture (USDA), are publishing this final rule for the oneRD Guarantee Loan Program (oneRD). The intent of this rule is to make necessary revisions to the policy and procedures which will strengthen oversight and management of the growing Community Facilities (CF), Water and Waste Disposal (WWD), Business and Industry (B&I), and Rural Energy for America (REAP) guarantee portfolios. This action is part of a continuing effort by the Agency to improve customer service for its lenders and create a more efficient work process for its staff.

**DATES:** *Effective date:* This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Comment date:* Comments are due [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by docket number RUS-19-Agency-0030

and Regulatory Information Number (RIN) number 0572-AC56 through

<https://www.regulations.gov>.

*Instructions:* All submissions received must include the Agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Thomas P. Dickson, Regulations Management Division, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Washington, DC 20250; telephone 202-690-4492; e-mail [thomas.dickson@usda.gov](mailto:thomas.dickson@usda.gov)

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBCS), and the Rural Utilities Service (RUS), agencies of the USDA Rural Development mission area, hereinafter collectively referred to as the Agency, published a final rule with comment on July 14, 2020 (85 FR 42494) that created a unified guaranteed loan platform for enhanced delivery of four existing guaranteed loan programs: Community Facilities (CF) administered by RHS; Water and Waste Disposal (WWD) administered by RUS; and Business and Industry (B&I) and Rural Energy for America (REAP) administered by RBCS. The final rule was effective on October 1, 2020, and Rural Development began operating under the new guarantee loan platform on that date.

Collectively, Rural Development's guaranteed loan programs work to assist in building and maintaining sustainable rural communities. Through the public comment period and monthly office hours with lenders and staff, the Agency has solicited feedback on the requirements and policies contained in the rule implemented on October 1, 2020. The Agency

has identified areas for revision or clarification that are amended with this final rule with comment. This oneRD final rule with comment incorporates revisions intended to simplify, clarify, improve, expand, and enhance the delivery of the four guaranteed loan programs.

## **II. Summary of Comments and Responses**

Through the public comment period and monthly office hours with lenders and staff, the Agency has solicited feedback on the requirements and policies contained in the rule implemented on October 1, 2020. The Agency has identified needed revisions and clarification based on the comments received.

Rural Development received 87 comments from 24 commenters on the final rule with comment issued on July 14, 2020. Five commenters were private citizens, 10 commenters were anonymous and 9 comments were from lenders.

The following discusses each comment and the Agency's response, organized by section with the comment paragraph and then Agency response paragraph. Sections with multiple comments will continue the comment/response paragraph pairing format until all comments for that section are addressed.

### **Section 5001.3 Definitions.**

*Comment:* Four commenters requested additional definitions to be included in the regulation.

*Agency Response:* The Agency has reviewed the request and has determined the additional definitions would not add additional clarity to the regulation. However during our review it came to our attention that the definition of affiliate needed some additional clarification and two definitions needed updating to conform with changes made to those definitions in 7 CFR 4280. Additionally, due to the COVID pandemic the Agency has extended the timeline some businesses need for start-up; this has highlighted a potential loophole in the regulation and definitions for new businesses and existing businesses. We thought the 12-month timeline to be adequate for full ramp-up, but we are seeing issues with this, thus we made technical revisions to

the definition of Existing business as well as New business as enumerated in Section III, Summary of Changes.

#### **Section 5001.104 WWD projects and requirements.**

*Agency Comment:* The Agency has identified a revision needed to improve consistency and clarity of Section 5001.104; this revision is included in Section III, Summary of Changes to Rule.

#### **Section 5001.105 Eligible B&I projects and requirements.**

*Comment:* The Agency received several comments that the OneRD rule language is much stricter for project eligibility than what the existing Business and Industry regulation, 7 CFR 4279, had been.

*Agency Response:* Upon evaluation, it was not the Agency's intention to further restrict project eligibility. Several clarifications have been identified and are included in Section III, Summary of Changes to Rule.

*Comment:* Several comments were received on the revised equity requirements under 7 CFR 5001.105(d). The commenters believed the equity requirement for new businesses has increased from 20% to 25% of the total eligible project costs under Table 1 to 5001.105(d). They believe this additional 5% makes it even more difficult for new businesses to open in rural America. They recommended that the equity requirements for new businesses be 20% regardless if calculated as balance sheet equity or as a percentage of the total eligible project costs.

*Agency Response:* The Agency believes that there may have been some confusion over the requirement - it's 25% of project cost OR 20% balance sheet equity at loan closing. In fact, there are 3 other options available to meet the equity requirements. This issue has been addressed with Lenders during monthly office hours the Agency held for lenders. Therefore, the Agency believes the issue has been resolved and no regulatory amendments are needed.

#### **Section 5001.115 Ineligible projects – general**

*Comment:* Several commenters requested that 7 CFR 5001.115(a) “any investment or

arbitrage” be removed as an ineligible purpose as it seems to be excluding. They believe that excluding arbitrage from program eligibility, in its strictest sense, would leave many businesses, that it would seem the Agency would want to promote ineligible for program assistance.

*Agency Response:* The Agency does not agree. The intent of the provision is to prevent borrowing money to buy stock and holding such stock for future increases in value, therefore the regulation will not be amended.

*Comment:* Seven comments were received in reference to 7 CFR 5001.115(n) which states “owner-occupied housing or self-storage facilities” are ineligible. The commentors felt that the intent is for the owner to have control over the facility, which the owner(s) would if determining who can and cannot be a lessee. Self-storage facilities provide construction jobs, permanent jobs, and increase the tax base in rural communities.

*Agency Response:* The Agency agrees with the comments in part and is therefore amending 5001.115(n) to clarify when owner occupied housing is considered eligible and removed the ineligibility of self-storage facilities.

#### **Section 5001.121 Eligible uses of loan funds.**

*Agency Comment:* The Agency issued a final rule with comment on September 15, 2020, after the publication of the OneRD Guarantee regulation on July 1, 2020, promulgating Special Authority to Enable Funding of Broadband and Smart Utility Facilities Across Select Rural Development Programs (Smart Utility). A cross reference to 7 CFR 1980, subpart M has been added to the opening paragraph of Section 5001.121 as discussed in Section III, Summary of Changes to Rule.

#### **Section 5001.126 Borrower eligibility.**

*Agency Comment:* The Agency revised 7 CFR 4280 to remove references to the guarantee loan program and cross referencing to 7 CFR 5001. In the process of this revision, it was determined that 7 CFR 5001.126(e) needed to be amended to add “New Users” to conform with the revisions to 7 CFR 4280.

**Section 5001.130 Lender eligibility requirements.**

*Agency Comment:* The Office of Management and Budget promulgated revisions to 7 CFR 25, “Universal Identifier and System for Award Management” on August 13, 2020, after the publication of the OneRD regulation on July 14, 2020. Therefore, a cross reference to 7 CFR 25 is needed in 5001.130 which requires an awardee of Federal financial assistance be registered in and maintain an active account in the System for Award Management (SAM). Section 5001.130(a) is amended to include the new requirements for lenders to be registered in and maintain an account in SAM in accordance with 7 CFR 25.200.

**Section 5001.202 Lender’s credit evaluation.**

*Comment:* The Agency received a couple of comments on the need for the Lender to discuss the feasibility study, as well as other applicable studies and reports in the credit presentation pursuant to §5001.202(b)(5) and submit such supporting documentation when applicable. However, the commenter felt that it appeared that the Agency will have its own policy. The commenter felt it is incumbent on the Agency to disclose its feasibility study policy to Lenders.

*Agency response:* The Agency agrees with the comment and therefore is amending 7 CFR 5001.202(b)(2) to further clarify when feasibility studies are required.

**Section 5001.204 Personal, partnership, and corporate guarantees.**

*Agency Comment:* The Agency has identified a revision needed to improve consistency and clarity of Section 5001.204; this revision is included in Section III, Summary of Changes to Rule.

**Section 5001.205 General project monitoring requirements.**

*Comment:* Six lenders commented that they are happy to see that the Agency is allowing Loan Note Guarantees (LNG) prior to construction, however they feel the adoption of the current procurement process and standards to regulate construction loan guarantees is not in the borrower, lender or government's interest. They believe the adoption of the federal process

would be an injurious and crippling barrier to entry into the LNG prior to construction, defeating the whole purpose of this rule. They stated all lenders have a construction policy in place to mitigate risk and by adding the requirements to mirror the USDA construction disbursement only increases the burden for the lender and urged us to reconsider this approach.

*Agency Response:* The Agency agrees with the comments that the lenders have the capacity and experience to manage this issue and therefore is amending Section 5001.205(e)(2)(ii) to allow the lender the flexibility when it documents the loan to include provisions to disburse funds and monitor progress of the construction project.

#### **Section 5001.207 Environmental responsibilities.**

*Comment:* The Agency received five comments pertaining to the Council for Environmental Quality (CEQ) publication in the Federal Register on July 16, 2020. The commenters requested the Agency to comply with newly published CEQ requirements.

*Agency Response:* The Agency is in the process of reviewing the new requirements and has determined not to make any changes to OneRD at this time. However, any appropriate conforming changes necessitated from updates to 7 CFR 1970, Environmental Policies and Procedures” will be made to 7 CFR 5001 to ensure compliance with CEQ’s regulations.

#### **Section 5001.303 Applications for loan guarantee.**

*Comment:* The Agency received three comments seeking some clarity and guidance on the need to now submit draft loan agreements. The commenters stated that one of the attractive features of the Agency guaranteed programs is the fact that lenders use their own debt and security instruments to document the loan. The way Section 5001.303 is currently written, the Agency is forcing lenders to modify their existing systems to meet the requirements.

*Agency Comment:* Based on the comments received, the Agency has identified several revisions to improve the clarity of Section 5001.303 and these revisions are included in Section III, Summary of Changes to Rule.

#### **Section 5001.304 Specific application requirements for CF projects.**

*Agency Comment:* The Agency has identified revisions needed to improve consistency and clarity of Section 5001.304; these revisions are included in Section III, Summary of Changes to Rule.

**Section 5001.318 B & I project priority point system.**

*Comments:* The Agency received a comment in reference to giving priority points to a loan which offers a decreased guarantee percentage on a B&I project. They pointed out that this would be giving priority points to a guaranteed loan for violating the rule.

*Agency Response:* The Agency agrees, it was not the intention to allow priority points be given to a guaranteed loan that decreases the guarantee percentage for the loan. Since OneRD sets the guaranteed percentage on an annual basis and does not allow for any deviations of the set guaranteed percentage, the Agency will no longer grant priority points for a guaranteed loan that decreases the maximum allowable guaranteed percentage. Therefore, 7 CFR 5001.318(c)(3) has been removed.

**Section 5001.401 Interest rate provisions.**

*Agency Comment:* The Agency has identified a technical correction needed to improve clarity of Section 5001.401; this revision is included in Section III, Summary of Changes to Rule.

**Section 5001.407 Percentage of loan guarantee.**

*Comments:* Nine commenters requested the Community Facility Program provide for a 90% guarantee as they believe that being capped at 80% in addition to the possibility of raising fees will discourage wide-spread lender participation in a market of non-profit borrowers who in many cases are providing critical services to the rural community.

*Agency Response:* While the Agency understands the concerns, no changes in the regulation are being made, however the Agency continues to do everything it can and will continue to review the fees and guarantee percentages on an annual basis to ensure there are no negative impacts on program participation.



**Section 5001.408 Participation or assignment of guaranteed loan.**

*Comments:* Since publication of the OneRD rule, the Agency has received feedback from lenders on the requirement to charge a minimum 50 basis point lender's servicing fee in Section 5001.408(b) when selling to a holder or participating to another lender.

*Agency Response:* Based on the concerns we have heard during monthly lender office hours or through direct lender contact with program staff, the Agency has reviewed this policy and determined to remove this requirement and allow lenders to determine their own interest rate spreads when assigning to a holder or participating to another lender.

**Section 5001.451 Conditional commitment.**

*Comments:* The Agency received two comments regarding the lender requesting an extension of a conditional commitment based on the following statement in the regulation "no major changes have been made in the lender's loan conditions and requirements and no material adverse changes in the borrower or the borrower's financial condition have occurred since issuance of the conditional commitment." The concern is what constitutes a "major" change to request a change. It was suggested that the word "major" be defined or to remove the word "major" to avoid confusion.

*Agency Response:* The Agency agrees with the comments and is revising the sentence to remove this language as changes are not included in an extension of a conditional commitment.

**Section 5001.452 Loan closing and conditions precedent to issuance of loan note guarantee.**

*Comment:* Four comments were received on loan closing and the conditions precedent to issuance of the Loan Note Guarantee. There was a concern with Section 5001.452 as it seems to limit the presentation of note sale assignment documents to USDA with or immediately after the guaranteed loan closing. Many lenders may choose to hold a loan for a period, then, based on the financial goals of the lender, sell the guaranteed portion of the loan at any point during the life of the loan.

*Agency Response:* The Agency concurs with the comments and is removing the text "any

secondary market assignment documents,” as these documents are not required immediately after loan closing and may be submitted at any time subsequently.

*Comment:* Several comments were also received in reference to the requirement to obtain a title opinion or title insurance showing the borrower has good and marketable title to the real property and other collateral and all mortgages or other lien defects, restrictions, or encumbrances, if any. In most cases the guaranteed loan is closed based on a title commitment, which includes gap coverage until the issuance of a title insurance policy. Title companies can take weeks after a loan closing to issue title insurance policies. This requirement would leave the lender unable to fund the loan for weeks after a closing and filing of security instruments, as they await the receipt of the title insurance policy.

*Agency Response:* The Agency believes that this is a reasonable request, therefore the revisions have been made to § 5001.452(b)(8)(iii)(L)(2) and a new § 5001.452(b)(8)(iii)(L)(3) has been added to provide clarity.

#### **Section 5001.453 Issuance of the loan note guarantee.**

*Comment:* The Agency received a comment for clarification for the requirement of issuing a certificate of incumbency. The commenter stated some secondary market holders require the certificate of incumbency and signature and some do not require the certificate of incumbency and signature. Therefore, the certificate of incumbency and signature form should be eliminated. In lieu of the form, a certificate of incumbency and signature block should be included on the relevant forms, i.e., lender’s agreement, loan note guarantee, and assignment guarantee agreement to be completed when the form is originally prepared.

*Agency Response:* The Agency reviewed this request and determined that since some lenders require this form and some do not, we did not want to add this requirement to the “relevant” forms and leave as a stand-alone form that lenders may or may not complete based on their process.

#### **Section 5001.454 Guarantee fee.**

*Comment:* Two commenters had an issue with 7 CFR 5001.454(c) and the additional 0.50 percent guarantee fee for issuing the loan note guarantee prior to construction which may not be passed on to the borrower. The commenters stated rather than invite potential conflict with the lender, why not just accept that the fee is 0.50 percent higher for construction loans. It is a benefit to the borrower as well as to the lender. The borrower is likely not to have its project financed unless the lender obtains the guarantee during construction.

*Agency Response:* The Agency agrees with the lender's comment that not allowing the lender to pass the fee on to the borrower may have unintended consequences. Issuing the guarantee prior to construction completion (enabling the borrower to avoid cost of construction financing) is a significant benefit to the borrower, therefore the Agency has removed this restriction.

#### **Section 5001.513 Interest rate changes.**

*Comments:* Some commenters requested consideration be given to allowing a borrower to switch to a fixed interest rate even if it is higher than the variable rate in effect on the loan.

*Agency response:* The Agency reviewed this and has determined that if the borrower is requesting the rate change whether to a lower or a higher fixed rate, the Agency has removed the restriction of only allowing a rate change to a lower interest rate.

### **III. Summary of Changes to Rule**

1. The definition of “affiliate” is updated to further clarify what constitutes an affiliate.
2. The definition of “energy efficiency improvement” is updated to conform with 7 CFR 4280.
3. The definition of “existing business” is updated to further define what it means for an existing business to be in operation.
4. The definition of “new business” is updated to further define what it means for a new business to be in operation.
5. The definition of “final loss claim” is updated to correct an incorrect site reference.

6. The definition of “power purchase agreement” is updated to conform with 7 CFR 4280.

#### **Section 5001.8 Approvals, regulations, and forms**

Paragraph (a) is revised to clarify what constitutes an electronic signature.

Paragraph (d) is revised to update the website address where this regulation and forms referenced can be found.

Paragraph (e) is revised to clarify what constitutes an electronic signature for the Lender.

#### **7 CFR 5001.104 Exception Authority**

Paragraph (c) is revised to clarify when a utility project that is serving both rural and non-rural areas is eligible for a loan guarantee.

#### **7 CFR 5001.105 Eligible B&I projects and requirements**

1. The introductory paragraph is revised to clarify that the list of eligible projects is not an exhaustive list of the types of projects that will be considered as eligible B&I projects.

2. Paragraph (b)(1) is updated to clarify that a B&I guaranteed loan may be used for the purchase and development of land, buildings, or infrastructure for public or private commercial enterprises.

3. Paragraph (b)(8) is revised to clarify exclusion of owner-occupied housing in the B&I guarantee program.

4. Paragraphs (b)(9) and (b)(10) are combined and edited to clarify when B&I funds may be utilized to fund a CF project.

5. A new paragraph (b)(10) is added to clarify when B&I funds may be used for the development and construction of broadband and telecommunication systems, including modification of existing systems, that are not otherwise eligible under RUS, existing RUS borrowers, or if funding is not available in the eligible RUS program, subject to the public notice filing requirements of 7 CFR 1738.106(a) and the additional reporting requirements of 7 CFR 1738.107.

6. Paragraph (d)(1)(i) is revised to clarify the length of time the minimum balance sheet equity must be maintained.

7. Paragraph (d)(1)(ii) is revised to clarify the length of time the minimum balance sheet equity must be maintained.

8. Paragraph (d)(2)(i) is revised to clarify the length of time the minimum balance sheet equity must be maintained.

9. Paragraph (d)(2)(ii) is revised to clarify the length of time the minimum balance sheet equity must be maintained.

10. Paragraph (d)(3)(i) is revised to align it with Section 105(d)(2)(i).

11. Paragraph (d)(3)(ii) is revised to align it with Section 105(d)(2)(ii).

12. Paragraph (d)(4)(i) is revised to align it with Section 105(d)(2)(i).

13. Paragraph (d)(4)(ii) is revised to align it with Section 105(d)(2)(ii).

14. Paragraph (d)(5)(ii) is revised by removing the requirement for historical financial statements for personal loan guarantors, as this was added in error.

#### **7 CFR 5001.115 Ineligible projects-general**

Paragraph (n) is amended to clarify when owner occupied housing is considered eligible and removed paragraph (s) the ineligibility of self-storage facilities.

#### **7 CFR 5001.121 Eligible uses of loan funds**

(1) The introductory paragraph is updated to allow a recipient of a loan guarantee to use up to 10 percent of project funds to construct, improve, or acquire broadband infrastructure related to the project financed, to conform with the requirements of 7 CFR part 1980, subpart M.

(2) Paragraph 7 CFR 5001.121 (c)(6) is amended to revise the reference to a preliminary review.

#### **7 CFR 5001.126 Borrower eligibility**

Paragraph (e) is amended to add a new subparagraph (3) End users, to conform with 7 CFR

4280. This revision brings consistency to REAP on the analysis of the eligibility of the applicant controlling interest of an end-user.

#### **7 CFR 5001.130 Lender eligibility requirements**

Paragraph (a) is amended to include new requirements for lenders to be registered in and maintain an account in the System for Award Management (SAM) to conform with 2 CFR 25.

#### **7 CFR 5001.141 New market tax credits**

Paragraph (a)(2) is amended to revise an incorrect section reference.

#### **7 CFR 5001.202 Lender's credit evaluation**

Paragraph (b)(5) is amended to clarify where to find the specific program requirements for supporting documentation.

#### **5001.204 Personal, partnership, and corporate guarantees.**

Paragraph (b) is amended to remove the reference to the Federal Credit Reform Act of 1990.

#### **7 CFR 5001.205 General project monitoring requirements**

1. Paragraph (e)(2) is amended to provide clarity and consistency with § 5001.454(c).
2. Paragraph (e)(2)(ii) is amended to provide Lenders the opportunity to provide project monitoring under specific criteria.
3. Paragraph (f)(4) is amended to remove the words “and inspection reports” as this is covered in (f)(5).

#### **7 CFR 5001.303 Applications for loan guarantee**

1. Paragraph (b)(4)(ii) is amended to remove the words “and any guarantor(s)” as this requirement was unintentional and not required in previous B&I and REAP regulations.
2. Paragraph (b)(5) is renumbered to § 5001.303(c)(1) to improve flow and readability.
3. Paragraph (b)(5)(i) through (xiii) was moved to § 5001.451 and renumbered as (b)(3)(i) through (xiii) to improve flow and readability.

#### **7 CFR 5001.304 Specific application requirements for CF projects**

1. Paragraph (a)(1) is revised to provide consistency with the B&I program.

2. Paragraph (b) is amended to add a new (4) to coincide with B&I's requirements for feasibility studies.

#### **7 CFR 5001.318 B&I project priority point system**

1. The introductory paragraph in § 5001.318 is amended to correct the total maximum points allowed to 100. This is being done as the points total changed with the removal of § 5001.318(c)(3).

2. Paragraph (c)(3) is removed as it gives priority points to decreasing the guarantee percentage which violates the policy in the regulation and paragraph (c)(4) becomes (c)(3).

#### **7 CFR 5001.401 Interest rate provisions.**

Paragraph (d) is amended to clarify when a request for an interest rate change is to be made.

#### **7 CFR 5001.402 Term length, loan schedule, and repayment**

Paragraph (b)(3) is amended to clarify that the repayment schedule must be in consideration of the borrower's cash flow as provided in § 5001.402(b).

#### **7 CFR 5001.408 Participation or assignment of guaranteed loan**

Paragraph (b) is amended by removing the requirement of the lender to maintain a minimum servicing fee of 50 basis points from any holder. This will allow the lenders to determine their own interest rate spreads when selling to a holder or participating to another lender.

#### **7 CFR 5001.451 Conditional commitment**

1. Paragraphs (b)(5)(i) through (xiii) have been moved from § 5001.303 to paragraphs (b)(3)(i) through (xiii) of § 5001.451 which will improve flow and readability.

2. The third sentence in paragraph (e) is amended to remove the text "major changes have been made in the lender's loan conditions and requirements and no." This requirement is not needed to consider an extension of the conditional commitment; therefore, it has been removed.

#### **7 CFR 5001.452 Loan closing and conditions precedent to issuance of loan note guarantee**

1. Paragraph (b) is amended by deleting the text, "any secondary market assignment documents." Such documents are not required immediately after loan closing and may be submitted at any time subsequently.

2. Paragraph (b)(8)(iii)(L)(2) is amended by adding that a commitment for title insurance or title commitment, when including gap coverage, is acceptable and to clarify that a title opinion or title commitment is not required for anything other than real estate.

#### **7 CFR 5001.454 Guarantee fee**

Paragraph (c) is amended by removing the restriction of the lender not being able to pass the additional .50 percent on to the borrower when issuing the loan note guarantee prior to construction.

#### **7 CFR 5001.513 Interest rate changes**

Paragraph (e) is amended to allow variable rate changes to be changed to fixed rates whether the fixed rate is higher or lower at the request of the borrower, agreement of the holder, if any, and Agency concurrence.

#### **Subpart G – Delegations and Loan Approval Authorities**

Sections 5001.601 through 5001.603 are added to define basic information on delegation and loan approval authorities for the programs within the OneRD regulation.

### **IV. Executive Orders and Acts**

#### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches to maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.



This final rule has been determined to be not significant for purposes of Executive Order (EO) 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

#### **National Environmental Policy Act**

In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that i) this action meets the criteria established in 7 CFR 1970.53(f); ii) no extraordinary circumstances exist; and iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

#### **Executive Order 12988, Civil Justice Reform**

This final rule has been reviewed under Executive Order 12988 (Civil Justice Reform). The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that conflict with this rule will be preempted. No retroactive effect will be given to this rule.

#### **Executive Order 13132, Federalism**

The policies contained in this final rule do not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601–602) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking

requirements under the Administrative Procedure Act (“APA”) or any other statute. The APA exempts from notice and comment requirements rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this rule.

### **Executive Order 12372, Intergovernmental Consultation**

This final rule is excluded from the scope of Executive Order 12372 (Intergovernmental Consultation), which may require a consultation with State and local officials. See the final rule related notice entitled, “Department Programs and Activities Excluded from Executive Order 12372” (50 FR 47034).

### **Executive Order 13175, Consultation and Coordination with Indian Tribal Governments**

This executive order imposes requirements on the Agency. The Agency has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with the Agency on this rule, they are encouraged to contact USDA’s Office of Tribal Relations or the Agency’s Native American Coordinator at: [AIAN@usda.gov](mailto:AIAN@usda.gov) to request such a consultation.

### **Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance (CFDA) numbers assigned to the 4 programs within this rule are: 10.766 for Community Facility Programs, 10.760 for Water and Waste Disposal Programs, 10.768 for Business and Industry Programs and 10.868 for Rural Energy for America Program. The Catalog is available on the Internet at <https://beta.sam.gov>. The *SAM.gov* website also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Printing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the CFDA

from GPO, call the Superintendent of Documents at 202-512-1800 or toll free at 866-512-1800, or access GPO's online bookstore at <http://bookstore.gpo.gov>.

### **Paperwork Reduction Act and Recordkeeping Requirements**

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572-0166 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

### **E-Government Act Compliance**

Rural Development is committed to complying with the E-Government Act of 2002, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

### **Civil Rights Impact Analysis**

Rural Development has reviewed this rule in accordance with USDA Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, or marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this Final Rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status.

### **USDA Non-Discrimination Statement**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA Programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity,

in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410; or

(2) email: [OAC@usda.gov](mailto:OAC@usda.gov)

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## **List of Subjects**

### **7 CFR Part 5001**

Business and industry, Community facility, Energy efficiency improvement, Loan programs, Renewable energy, Rural areas, Rural development, Water and waste disposal.

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301 and 7 U.S.C. 1989, Chapter L of title 7 of the Code of Federal Regulations is amended as follows:

### **PART 5001 – GUARANTEED LOANS**

1. The authority citation for part 5001 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1926(a); 7 U.S.C. 1932(a); and 7 U.S.C. 8107.

## **Subpart A – General Provisions**

2. 2. Amend § 5001.3 by:

- A. Removing the definition “Affiliates”;
- B. Adding the definition “Affiliate”;
- C. Revising the definition “Energy efficiency improvement (EEI)”;
- D. Revising the first sentence in the definition “Existing business”;
- E. Revising the definition “Final loss claim”;
- F. Revising the definition “New business”; and
- G. Revising the definition “Power purchase agreement”.

The addition and revisions read as follows:

### **§ 5001.3 Definitions.**

\* \* \* \* \*

*Affiliate* means a person where one of the following circumstances exists:

(1) The person controls or has the power to control another person, or a third party or parties’ controls or has the power to control both. Factors such as ownership, management, current and previous relationships with or ties to another person, and contractual relationships, shall be considered in determining whether affiliation exists. It does not matter whether control is actually exercised, so long as the power to control exists. Entities owned and controlled by Indian Tribes, Alaskan Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), Community Development Corporations (CDCs), or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs, are not considered to be affiliated with other entities owned by these entities solely because of their common ownership or common management.

(2) There is a family relationship and identical or substantially identical business or economic interests amongst persons (such as where the immediate family operate entities in the same or similar industry in the same geographic area); however, a person may rebut such

determination with evidence showing that the business or economic interests are not identical or substantially identical.

\*\*\*\*\*

*Energy efficiency improvement (EEI)* means improvements to or replacement of an existing building or systems, or equipment owned by the borrower, that reduces measurable energy consumption on an annual basis.

\* \* \* \* \*

*Existing business* means a business that has been in operation for at least one full year and has achieved full operational capacity or stable operations as determined by the Administrator. \* \* \*

\* \* \* \* \*

*Final loss claim* means the Agency's payment of a final settlement amount with the lender after the collateral is liquidated or after settlement and compromise actions have been completed and as further set forth in § 5001.521(e).

\* \* \* \* \*

*New business* means a business that has been in operation for less than one full year and a business that has been in operation for at least one full year and has not achieved full operational capacity or stable operations as determined by the Administrator, including a new enterprise or new affiliate of an existing business moving or expanding into a new location involving new market or labor areas.

\* \* \* \* \*

*Power purchase agreement* means the terms and conditions governing the sale and transportation of power produced by the borrower to another party.

\* \* \* \* \*

3. Amend § 5001.8 by revising paragraph (a) and adding paragraph (e) to read as follows:

## **§ 5001.8 Approvals, regulations, and forms.**

(a) When Agency approval or concurrence is required, it must be in writing and must be obtained prior to any action taken for which approval or concurrence is required. Written communication from an authorized Agency official, including any written communication approving, concurring, or otherwise communicating an Agency decision on a matter when such decision is required, may be transmitted via an electronic Agency system in accordance with Electronic Signatures in Global and National Commerce Act (ESIGN) of 2000 (114 Stat. 464) (E-Sign Act).

\* \* \* \* \*

(e) 7 CFR part 5001 does not prohibit or consent to electronic signatures. Rural Development will accept electronic signatures from Lenders for origination, loan closing, and servicing documents in accordance with the E-Sign Act unless otherwise prohibited by law or program. Lenders may use electronic signatures for electronic promissory notes (eNotes), deeds of trust and other documents relevant to the loan transaction, providing that the lender perfects and maintains a first lien position, an enforceable promissory note, and meets all other agency requirements including the following:

(1) Lenders may submit forms to Rural Development electronically using USDA's Service Center Agencies Online Services web site. Registration is limited to individuals and each individual authorized by the Lender must register and upon registration may electronically sign and submit certain forms on behalf of the Lender.

(2) Lenders who choose to accept electronic signatures from borrowers must ensure that such signatures meet the standards and requirements set forth in the E-Sign Act, as well as all other applicable federal and state regulations and guidelines. Lenders are charged with the same responsibility of due diligence with electronically signed documents as they are with paper documents. If any electronically signed document is deemed unenforceable and is connected to any fraud, misrepresentation or negligent servicing, the lender bears the risk that any loss claim

submitted in relation to the unenforceable document will be denied or reduced in accordance with applicable regulations. Any loss attributed to a lender's failure to collect on the promissory note or enforce the security instrument because of its electronic signature will be treated as negligent servicing under 7 CFR 5001 servicing regulations. Failure to comply with any Federal statute or regulation could result in the denial of a loan guarantee or claim, withdrawal of lending authority and/or debarment from Federal programs.

## **Subpart B – Eligibility Provisions**

4. Amend § 5001.104 by revising paragraph (c) to read as follows:

### **§ 5001.104 Eligible WWD projects and requirements.**

\* \* \* \* \*

(c) *Project location.* The project must be located in a rural area as defined in § 5001.3 of this part, except that utility projects serving both rural and non-rural areas are eligible for a loan guarantee regardless of project location. For utility service projects serving both rural and non-rural areas, the Agency will guarantee only the portion of the project necessary to provide the essential services to rural areas. The part of the facility located in a non-rural area must be necessary to provide the essential services to rural areas.

\* \* \* \* \*

5. Amend § 5001.105 by:

A. Revising the introductory text;

B. Revising paragraph (b)(1), (8), (9) and (10);

C. Revising paragraph (d)(1)(i) and (ii);

D. Revising paragraph (d)(2)(i) and (ii);

E. Revising paragraph (d)(3)(i) and (ii);



F. Revising paragraph (d)(4)(i) and (ii); and

G. Revising paragraph (d)(5)(ii)

The revisions read as follows:

**§ 5001.105 Eligible B&I projects and requirements.**

For a B&I project to be eligible for a loan guarantee under this part, it must meet the criteria specified in § 5001.102, be for a borrower eligible to submit an application for the project in accordance with § 5001.126, and the uses of loan funds include, but are not limited to, the following:

\* \* \* \* \*

(b) \* \* \*

(1) Purchase and development of land, buildings, or infrastructure for public or private commercial enterprises or industrial properties, including expansion or modernization.

\* \* \* \* \*

(8) Tourist and recreation facilities, including hotels, motels, bed and breakfast establishments, and resort trailer parks and campgrounds operated as a public or private commercial enterprise. Owner-occupied housing, such as bed and breakfasts, hotels and motels are only allowed when the pro rata value of a direct owner's living quarters, based on square footage, is deducted from the use of loan proceeds.

(9) Educational or training facilities including other CF projects when not eligible for financing through Rural Housing Service or Community Facilities programs.

(10) Development and construction of broadband and telecommunication systems, including modification of existing systems, that are not otherwise eligible for funding in the RUS program or if funding is unavailable in the RUS program, subject to the Public Notice Filing requirements of 7 CFR 1738.106(a) and the additional reporting requirements of 7 CFR 1738.107.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) A minimum of 10 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-balance sheet equity ratio of 9 to 1, at loan closing;

(ii) A 10 percent or more of total eligible project costs, borrower investment of equity or other funds into the project including grants or subordinated debt when subject to a standstill agreement for the life of the loan;

\*\* \* \* \*

(2) \* \* \*

(i) A minimum of 10 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-balance sheet equity ratio of 9 to 1 at loan closing; or

(ii) Borrower investment of equity or other funds (including subordinated debt when subject to a standstill agreement for the life of the loan and grants) into the project in an amount of 10 percent or more of total eligible project cost;

(3) \* \* \*

(i) A minimum of 25 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-equity ratio of 3 to 1, at guaranteed loan closing; or

(ii) Borrower investment of equity or other funds (including subordinated debt when subject to a standstill agreement for the life of the loan and grants) into the project in an amount of 25 percent or more of total eligible project cost;

(4) \* \* \*

(i) A minimum of 20 percent balance sheet equity (including subordinated debt when

subject to a standstill agreement for the life of the loan), or a maximum debt-to-equity ratio of 4 to 1, at guaranteed loan closing, or;

(ii) Borrower investment of equity or other funds (including subordinated debt when subject to a standstill agreement for the life of the loan and grants) into the project in an amount of 25 percent or more of total eligible project cost;

(5) \* \* \*

(ii) *Reductions.* The Agency may reduce the minimum equity requirement for an existing business when personal or corporate guarantees are obtained in accordance with § 5001.204 of this part; and all pro forma statements indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, and debt service coverage ratio.

\* \* \* \* \*

6. Amend § 5001.115 by revising paragraph (n) to read as follows:

**§ 5001.115 Ineligible projects - general.**

\* \* \* \* \*

(n) Except as provided in § 5001.105(b)(8), owner-occupied housing.

\* \* \* \* \*

§ 5001.115 [Amended]

7. Amend § 5001.115 by removing paragraph (s).

8. Amend § 5001.121 by revising the introductory paragraph and paragraph (c)(6) to read as follows:

**§ 5001.121 Eligible uses of loan funds.**

Guaranteed loan funds can only be used for the items specified in this section. In addition, RD may allow a recipient of a loan guarantee under this Part to use up to 10 percent of project funds to construct, improve, or acquire broadband infrastructure related to the project

financed, subject to the requirements of 7 CFR part 1980, subpart M.

\* \* \* \* \*

(c) \* \* \*

(6) Takeout of interim financing: Guaranteeing a loan that provides for permanent, long-term financing after project completion to pay off a lender's interim loan will not be treated as debt refinancing provided that the lender submits a complete request for preliminary eligibility review or complete application that proposes such interim financing prior to closing the interim loan. The borrower must take no action until the conclusion of the environmental review process prior to any action that would have an adverse effect on the environment or limit the choices of any reasonable alternatives to be considered by the Agency.

9. Amend § 5001.126 by redesignating paragraphs (e)(3) through (4) as paragraphs (e)(4) through (5) and adding a new (e)(3) to read as follows:

**§ 5001.126 Borrower eligibility.**

\* \* \* \* \*

(3) *End users.* If the controlling interest in the applicant entity is otherwise eligible as an applicant and a legal transaction between two parties for the sale of energy in an open market is being proposed, the Agency will not consider the energy end-users as part of the analysis of the eligibility of the applicant. However, if the proposed end-user would be an ineligible applicant, such as an entity which is residential in nature or a non-profit entity, and the REAP applicant entity is a newly formed special-purpose entity with substantially the same ownership as the proposed end-user, then the REAP applicant entity is not eligible.

10. Amend § 5001.130 by adding paragraph (a)(6) to read as follows:

**§ 5001.130 Lender eligibility requirements.**

\* \* \* \* \*

(a) \* \* \*

(6) Be registered in and maintain an account in the System for Award Management

(SAM) in accordance with 2 CFR 25.200.

\* \* \* \* \*

11. Amend § 5001.141 by revising paragraph (a)(2) to read as follows:

**§ 5001.141 New markets tax credits.**

\* \* \* \* \*

(a) \* \* \*

(2) The provisions of §5001.127(f) notwithstanding, a lender that is a CDE or sub-CDE may have an ownership interest in the borrower provided that each condition specified in paragraphs (a)(2)(i) through (iii) of this section is met.

\* \* \* \* \*

**Subpart C - Origination Provisions**

12. Amend § 5001.202 by revising paragraph (b)(5) to read as follows:

**§ 5001.202 Lender's credit evaluation.**

\* \* \* \* \*

(b) \* \* \*

(5) *Conditions.* This factor refers to the general business environment, including the regulatory environment affecting the business or industry, and status of the Borrower's industry. Consideration will be given to items listed below and, when applicable, the lender should submit supporting documentation (e.g., feasibility study, market study, preliminary architectural or engineering reports, etc.) in accordance with §§ 5001.304 through 5001.307:

\* \* \* \* \*

13. Amend § 5001.204 by revising paragraph (b) to read as follows:

**§ 5001.204 Personal, partnership, and corporate guarantees.**

\* \* \* \* \*

(b) When warranted by an Agency assessment of potential financial risk, the Agency may require the following:

\* \* \* \* \*

14. Amend § 5001.205 by revising paragraphs (e)(2) introductory text, (e)(2)(ii) and (f)(4) to read as follows:

**§ 5001.205 General project monitoring requirements.**

\* \* \* \* \*

(e) \* \* \*

(2) *Issuance of loan note guarantee prior to completion of the project's construction.*

Except for projects utilizing non-proven technologies, the lender may request that the loan note guarantee be issued prior to completion of a project's construction. The lender's request will be considered by the Agency, who may require credit risk mitigation. An additional fee for issuance of the loan note guarantee prior to completion of the project's construction will be assessed in accordance with §5001.454(c) in subpart E. The lender must verify and include evidence of the following in its request:

\* \* \* \* \*

(ii) The borrower and lender have entered into a contract with an independent disbursement and monitoring firm with a construction monitoring plan acceptable to and approved by the Agency or, the lender documents that they have the capacity and experience to disburse funds and provides a monitoring plan acceptable to the Agency;

\* \* \* \* \*

(f) \* \* \*

(4) Status of construction; and

\* \* \* \* \*

**Subpart D - Guarantee Application Provisions.**

15. Amend § 5001.303 by:

- A. Revising paragraph (b)(4)(ii);
- B. Redesignating paragraphs (c)(1) through (18) as paragraphs (c)(2) through (19).
- C. Redesignating (b)(5) introductory text as paragraph (c)(1);
- D. Removing paragraphs (b)(5)(i) through (xiii);
- E. Redesignating paragraphs (b)(6) and (7) as paragraphs (b)(5) and (6);
- F. Revising the newly redesignated paragraph (c)(1).

The revisions read as follows:

**§ 5001.303 Applications for loan guarantee**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(ii) Agency-acceptable historical balance sheet, income statements, and cash flow statements of the borrower for the lesser of the last three fiscal years or all years of operation; and

(c) \* \* \*

(1) For all applications of \$600,000 or greater, a draft loan agreement for the guaranteed loan.

\* \* \* \* \*

16. Amend § 5001.304 by revising paragraph (a)(1) and adding paragraph (a)(4) to read as follows:

**§ 5001.304 Specific application requirements for CF projects.**

\* \* \* \* \*

(a) \* \* \*

(1) Guaranteed loans of \$25 million or less to existing community facilities;

\* \* \* \* \*

(4) The Agency may require a Feasibility Study when the lender's analysis, borrower's business plan, or project information is not sufficient to determine the technical feasibility, market feasibility, or economic viability of the project.

(i) For guaranteed loans greater than \$1,000,000.00 to a new entity or an entity conducting a new activity, a feasibility study prepared by an independent qualified consultant acceptable to the Agency is required. The scope of the feasibility study will be determined by the Agency and is dependent on the complexity of the project and the borrower.

(ii) For loans of \$1,000,000.00 or less to new and existing entities, the Agency may require a feasibility study when the lender's analysis or other borrower information is not sufficient to determine the technical feasibility or economic viability of the project, or if the project will significantly affect the operations of a borrower who is an existing entity and its historic cash flow.

\* \* \* \* \*

17. Amend § 5001.318 by:

- (a) Revising the introductory paragraph;
- (b) Revising the introductory text of paragraph (c);
- (c) Removing paragraph (c)(3); and
- (c) Redesignating paragraph (c)(4) as paragraph (c)(3).

The revision reads as follows:

**§ 5001.318 B & I project priority point system.**

This section applies to B&I projects seeking a loan guarantee. When applications on hand have the same priority score, the Agency will give preference to applications involving guaranteed loans from veterans. To receive veteran points, a veteran or veterans must own 20 percent or more interest in the borrower and the borrower must sign a certification in its application to indicate that the borrower has veteran status. A maximum of 100 points can be



awarded.

\* \* \* \* \*

(c) *Guaranteed loan features.* An application is eligible to receive points under each of the categories identified in paragraphs (c)(1) through (3) of this section as follows:

\* \* \* \* \*

## **Subpart E – Loan and Guarantee Provisions**

18. Amend § 5001.401 by revising paragraph (d) to read as follows:

### **§ 5001.401 Interest rate provisions.**

\* \* \* \* \*

(d) *Interest rate changes.* Any change in the base rate or fixed interest rate between issuance of the conditional commitment and loan closing must be approved by the Agency. Approval of such a change must be shown as an amendment to the conditional commitment and must be reflected on the guaranteed loan closing report form.

19. Amend § 5001.402 by revising paragraph (b)(3) to read as follows:

### **§5001.402 Term length, loan schedule, and repayment.**

\* \* \* \* \*

(b) \* \* \*

(3) If the promissory note provides for an interest-only period, interest must be paid at least annually starting on a date that is no more than one year from the date of the promissory note. Scheduling of the first payment of principal and interest will be subject to consideration of whether the facility is operational and generates adequate income. However, the scheduling of the first full principal and interest payment must commence not more than 3 years from the date of the promissory note and be paid at least annually thereafter.

\* \* \* \* \*

20. Amend § 5001.408 by revising paragraph (b) to read as follows:

### **§ 5001.408 Participation or assignment of guaranteed loan.**

\* \* \* \* \*

(b) *Lender's servicing fee to holder.* The assignment guarantee agreement must clearly state the guarantee portion of loan as a percentage and corresponding dollar amount of the guaranteed portion of the guaranteed loan it represents and the lender's servicing fee. The lender cannot charge the Agency a servicing fee and servicing fees are not eligible expenses for loss claim.

\* \* \* \* \*

21. Amend § 5001.451 by revising (b)(3) and (e) to read as follows:

**§ 5001.451 Conditional commitment.**

\* \* \* \* \*

(b) \* \* \*

(3) Loan agreement requirements to include:

(i) Repayment terms and amortization provisions of the guaranteed loan;

(ii) Description of real property collateral, list of other collateral and identification of the lender's lien priority in the collateral;

(iii) A list of persons and entities guaranteeing payment of the guaranteed loan and their percentage of guarantee;

(iv) Requirement as to the type and frequency of the financial statements to be required for the duration of the guaranteed loan (guarantor statements must be updated at least annually);

(v) Prohibition against borrower assuming liabilities or obligations of others;

(vi) Limitations on borrower dividend payments and compensation of officers, owners and members of borrower;

(vii) Limitations on the purchase and sale of equipment other fixed assets and real estate;

(viii) Restrictions on mergers, consolidations, or sales of the business, project, or guarantee loan collateral without the concurrence of the lender;

(ix) Limitations on significant management changes without the concurrence of the lender;

(x) Maximum debt-to-net worth ratio, when required by the lender or by this part;

(xi) Minimum debt service coverage ratio, when required by the lender or by this part;

(xii) Requirements imposed by the Agency in its conditional commitment;

(xiii) Agency environmental requirements; and

(xiii) Requirement for the lender and the Agency to have reasonable access to the project and financial records including access for periodic inspections of the project and financial records by a representative of the lender or the Agency; and

(xiv) Requirement for the borrower to provide the lender and the Agency performance information during the term of the guaranteed loan.

\* \* \* \* \*

(e) Modification, and expiration of conditional commitment. The conditional commitment issued by the Agency will be effective for a period of one year or sufficient time to complete the guaranteed loan project prior to loan closing. The lender must submit a written request to the Agency to extend the conditional commitment at least 30 days prior to its expiration date and obtain Agency approval for the extension. The Agency will consider this request only if no material adverse changes in the borrower or the borrower's financial condition have occurred since issuance of the conditional commitment. If a conditional commitment expires, the Agency will notify the lender in writing and may de-obligate the funds. Any additions or modifications to conditions stated in the original conditional commitment must be agreed upon between the lender, the borrower, and the Agency.

22. Amend § 5001.452 by revising paragraphs (b) introductory text and (b)(8)(iii)(L)(2) and adding paragraph (b)(8)(iii)(L)(3) to read as follows:

**§ 5001.452 Loan closing and conditions precedent to issuance of loan note guarantee.**

\* \* \* \* \*

(b) Simultaneously with or immediately after the guaranteed loan closing, the lender must provide to the Agency the guarantee fee, and the following forms and documents:

\* \* \* \* \*

(8) \* \* \*

(iii) \* \* \*

(L) \* \* \*

(2) A title opinion or title insurance showing the borrower has good and marketable title to the real property and other collateral and fully addressing all existing mortgages or other lien defects, restrictions or encumbrances. In those cases where there is adequate gap coverage, a title commitment may be acceptable.

\* \* \* \* \*

23. Amend § 5001.454 by revising paragraph (c) to read as follows:

**§ 5001.454 Guarantee fee.**

\* \* \* \* \*

(c) Loan note guarantee prior to completion. If the loan note guarantee is issued prior to completion of the project's construction under § 5001.205(e)(2), an additional guarantee fee of 0.50 percent will be added.

\* \* \* \* \*

**Subpart F - Servicing Provisions**

24. Amend § 5001.513 by revising paragraph (e) to read as follows:

**§ 5001.513 Interest rate changes.**

\* \* \* \* \*

(e) *Variable rate to fixed rate change.* Variable rates can be changed to a fixed rate at the request of the borrower, agreement of the holder, if any, and Agency concurrence.

\* \* \* \* \*

Justin Maxson,  
Deputy Under Secretary,  
Rural Development.

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